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Supreme Court, U.S.
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No. 08-

IN THE

Supreme Court of the United States

ROBERT O. SANDBERG,

Petitioner,

v.

THE CITY OF WHEATON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Supreme Court of Illinois refused to grant leave to appeal a decision of the Court of Appeals for the State of Illinois for the Second District affirming the taking of Petitioner's property as part of a redevelopment plan in the City of Wheaton, Illinois.

The question presented for review is:

Whether the exercise of eminent domain authority by a municipality to take property under a redevelopment plan is valid in the absence of the municipality making the specific findings required by the statute granting eminent domain authority to the municipality?

LIST OF PARTIES

The parties that participated in the appeal below are listed in the caption. In addition, Karen K. Sandberg, DuPage Trust Company, as Trustee under Trust Deed dated March 8, 1973, Jason R. Stiers, Jonathan T. Lee, d/b/a The Bubble Tea House, Cindy L. Nix, and unknown owners were named as defendants in the trial court.

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OPINION BELOW

This condemnation action was filed on August 20, 2002 in the Circuit Court of Illinois for the Eighteenth Judicial Circuit (DuPage County).

The trial court ultimately found for the City of Wheaton and against Mr. Sandberg and condemned his property. A final judgment was entered on October 2, 2006. (Appendices B and C).

Mr. Sandberg appealed to the Appellate Court for the State of Illinois for the Second District. The Appellate Court affirmed the judgment below on February 19, 2008. (Appendix A).

Mr. Sandberg then sought leave from the Supreme Court of Illinois to appeal. His Petition for Leave to Appeal was denied on May 29, 2008. (Appendix D).

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

The Supreme Court of Illinois denied Petitioner's Petition for leave to Appeal on May 29, 2008. (Appendix D).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant Provisions of Tax Increment Allocation Redevelopment Act

65 ILCS 5/11-74.4-3 Definitions:

(b) "Conservation area" means any improved area within the boundaries of a redevelopment project area located within the territorial limits of the municipality in which 50% or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted area but because of a combination of three or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, is detrimental to the public safety, health, morals or welfare and such area may become a blighted area."

(p) "Redevelopment project area" means an area designated by the municipality, which is not less in the aggregate than 11/2 acres and in respect to which the municipality has made a finding that there exist conditions which cause the area to be classified as an industrial park

conservation area or a blighted area or a conservation area, or a combination of both blighted areas and conservation areas.

Relevant Provision Of
City Of Wheaton Ordinance No. F-0418
Approving A Tax Increment Redevelopment Plan

Section 1 B.

"There exist conditions which cause the Area to be subject to designation as a redevelopment project area under the Act and to be classified as a conservation area as defined in Section 11-74.4-3(b) of the Act."

STATEMENT OF THE CASE

Respondent City of Wheaton, an Illinois Home Rule Municipal Corporation, exercised eminent domain powers to take property belonging to Petitioner Robert O. Sandberg. On December 6, 1999, the City of Wheaton adopted by ordinance a Tax Increment Redevelopment Plan and Redevelopment Project for the City of Wheaton Main Street Redevelopment Project Area. The Ordinance was adopted pursuant to 65 ILCS 5/11-74.4-4 of the Illinois Compiled Statutes ("TIF Act"). The City asserted that the proposed Project was a "conservation area" as that term is defined in the TIF Act. The City also set forth the findings it claimed justified its actions. Included was a finding that "There exist conditions which cause the Area to be subject to designation as a redevelopment project area under the Act and to be classified as a conservation area as defined in Section 11-74.4-3(b) of the Act."

Attached to the Ordinance and incorporated therein was the Wheaton Main Street Redevelopment Area Project and Plan of November, 1999. The Plan concluded that the City could make a finding under the Act that "The Project Area on the whole has not been subject to appropriate growth and redevelopment through investment by private enterprise, and would not reasonably be anticipated to be developed consistent with City policies without adoption of this Redevelopment Plan." No finding that the area was detrimental to the public safety, health, morals or welfare was made by the City or in the Project and Plan.

On January 7, 2002, the City amended the Redevelopment Project and Plan. The Wheaton Main Street Redevelopment Area Project and Plan of November, 1999 as amended January 2, 2002 was attached to and incorporated in the Ordinance. The Amended Project and Plan concluded, as did the earlier version, that the City could make a finding under the Act that "The Project Area on the whole has not been subject to appropriate growth and redevelopment through investment by private enterprise, and would not reasonably be anticipated to be developed consistent with City policies without adoption of this Redevelopment Plan." As in the earlier version, no finding was made that the area was detrimental to the public safety, health, morals or welfare.

Defendant Robert Sandberg owned several parcels of property in the Main Street Redevelopment Area, including 111-113 North Main Street. On May 20, 2002, the City of Wheaton authorized the initiation of negotiation for the acquisition of 111-113 North Main Street. On May 21, 2002, the City of Wheaton sent an offer of purchase for

$260,000.00 to Mr. Sandberg, which required a response in ten days. On June 17, 2002, Mr. Sandberg spoke at a council meeting.

On August 19, 2002, the City of Wheaton approved the filing of the condemnation action against Mr. Sandberg. The condemnation action was filed the next day on August 20,, 2002 in the Circuit Court of Illinois for the Eighteenth Judicial Circuit (DuPage County).

During the lengthy trial proceedings, Mr. Sandberg continually challenged the use of eminent domain to take his property. Among other arguments, he asserted that the City had failed to make the necessary and appropriate specific findings required by the TIF Act which conferred the power to use eminent domain to take property for redevelopment and conservation areas. The trial court ultimately found for the City of Wheaton and against Mr. Sandberg and condemned his property. A final judgment in the amount of $350,000.00 was entered as the just compensation due Robert Sandberg on October 2, 2006. (Appendix A and Appendix B).

Mr. Sandberg appealed to the Appellate Court for the State of Illinois for the Second District. The Appellate Court affirmed the judgment below on February 19, 2008. The Appellate Court rejected Petitioner's claim that the failure to make specific findings required by the TIF Act invalidated Wheaton's Ordinance. Instead, the Appellate Court held that Wheaton's reference to the TIF Act in its general finding that the redevelopment plan met the requirements of the TIF Act was sufficient. (Appendix A at 8a-11a).

Mr. Sandberg then sought leave from the Supreme Court of Illinois to appeal. His Petition for Leave to Appeal was denied on May 29, 2008. (Appendix D).

REASONS FOR GRANTING THE PETITION

Whether the exercise of eminent domain authority by a municipality taking private property in the absence of the specific findings required by the statute granting the municipality the authority is valid is an important question, implicating the appropriate balance of the power of government to take property and the rights of property owners to enjoyment of their property. The decision of the Illinois Courts allowing the taking of Plaintiff's property based solely upon the City of Wheaton's conclusory finding of a conservation area disregards the safeguards long recognized by this Court in cases such as *City of Cincinnati v. Vester*, 281 U.S. 439, 50 S. Ct. 360 (1930). Left undisturbed, the decision below will distort the carefully crafted balance between the rights of property owners and the eminent domain powers of state and local governments.

REVIEW IS WARRANTED BECAUSE THE ERRONEOUS RULING OF THE ILLINOIS COURTS AFFIRMING THE USE OF EMINENT DOMAIN IN THE ABSENCE OF THE FINDINGS REQUIRED BY THE STATUTE UNDER WHICH THE USE OF EMINENT DOMAIN WAS AUTHORIZED IMPLICATES SIGNIFICANT ISSUES OF PROPERTY RIGHTS PROTECTED BY THE FOURTEENTH AMENDMENT.

Illinois Courts have recognized that statutes empowering governmental authorities to take private property through eminent domain are in derogation of individual rights and must be strictly construed to protect the rights of the property owners. *Village of Cary v. Trout Valley Association*, 282 Ill. App. 3d 165, 667 N.E.2d 1082 (2nd Dist. 1996) and *Department of Transportation v. Hunziker*, 342 Ill. App. 3d 588, 796 N.E.2d 122 (3rd Dist. 2003). "A statutory grant of eminent domain power can only be exercised in the manner authorized by statute." *Village of Cary v. Trout Valley Association*, *supra* at 169.

These holdings are in conformity with the direction of this Court in *City of Cincinnati v. Vester*, *supra*. There, this Court affirmed the rejection of condemnations that were based on the general finding by a municipality that the takings in question furthered an unspecified public use. In rejecting this reliance on a mere conclusion without the specification of a particular public use, this Court stated "it would seem clear that a mere statement by the council that the excess condemnation is in furtherance of such use would not

be conclusive." *Vester* at 447. The Court went on to note that

> [o]therwise, the taking of any land in excess condemnation, although wholly unrelated to the immediate improvement, would be sustained on a bare recital. This would be to treat the constitutional provision as giving such sweeping authority to municipalities as to make nugatory the express conditions upon which the authority is granted.

Vester at 447.

In this case, Wheaton's use of eminent domain is only valid if it was an authorized use of such power under the TIF Act. Illinois Courts have construed the purpose of that Act as providing municipalities with the means to eradicate blighted conditions. *People ex rel. City of Canton v. Crouch*, 79 Ill.2d 356, 403 N.E.2d 242 (1980). To be eligible to use eminent domain powers under the Act, a municipality must first establish that the proposed redevelopment area meets the statutory criteria for designation as a blighted area, conservation area or combination thereof. *Board of Education v. Burr Ridge*, 341 Ill.App. 3d 1004, 793 N.E.2d 856 (1st Dist. 2003). Wheaton asserted that the redevelopment area, which included Mr. Sandberg's property, was a conservation area as that term is defined under the TIF Act. However, the City made only the conclusory finding that "[t]here exist conditions which cause the Area to be subject to designation as a redevelopment project area under the Act and to be classified as a conservation area as defined in Section 11-74.4-3(b) of the Act."

However, the Act requires the municipality to make findings that there exist specific conditions which cause the redevelopment area to be classified as a conservation area. 65 ILCS 5/11-74.4-3(p). Under the statute in existence at the time of the adoption of the ordinance, a conservation area was defined as:

> . . . any improved area . . . in which 50% or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted area but because of a combination of three or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, is detrimental to the public safety, health, morals or welfare and such area may become a blighted area.

65 ILCS 5/11-74.4-3(b). Consequently, Wheaton had to make specific findings that 1) 50% of the buildings were more than 35 years old, 2) three or more of the listed factors existed making the area detrimental to the public safety, health, morals or welfare, and 3) because of the existence of these factors the area may become a blighted area.

In contradiction to *City of Cincinnati v. Vester*, *supra*, all of the findings required by the legislature of Illinois were not made by the City Wheaton. Indeed, given the limited findings of the Redevelopment Plan upon which the City based its eminent domain action, the required findings could not have been made. First, the City of Wheaton made no finding that any existing conditions made the area detrimental to the public safety, health, morals or welfare. The Project and Plan upon which the City relied also made no such finding of any condition that was already detrimental. To allow the City of Wheaton to adopt the ordinances absent a finding that the blighting factors had already made the area detrimental to the public safety, health, morals and welfare would ignore the clear language of the Act.

Second, the City of Wheaton had no basis on which to make its conclusory finding that the area may become blighted. The Eligibility Findings Report merely found that the characteristics contribute toward the decline of the project area. There is simply no finding that the existence of these characteristics would cause the area to become blighted.

The Illinois Appellate Court citing *City of Batavia v. Sandberg*, 286 Ill. App. 3d 991 (2d Dist. 1997) excused the failure to make specific findings because the reference to a "conservation area as defined in Section 11-74.4-3(b) of the Act" incorporates the specific requirements of the definition included in the statute. The Appellate Court reasoned that the conclusory reference to the Act was substantively the same as making the specific rulings. This reasoning and the resulting ruling should be rejected because it ignores

the fact that the Project and Plan, which were included in the Ordinance, did not support the specific findings required by the statute. Just as in *Vester*, the municipality is improperly acting to take property on a "bare recital". As a result, an individual's property rights have been terminated by the act of a municipality that fails to meet the requirements of the statute authorizing the use of eminent domain and is not supported by its own findings.

When non-compliance with a statute is apparent from the Ordinance and its attachments, a conclusory finding referencing the statute is not sufficient to allow the taking of property. The constitutional rights of individuals to hold property should and can not be trampled by the exercise of authority without the assurances guaranteed by a rule of law requiring strict compliance with the empowering statute. *City of Cincinnati v. Vester, supra.* In this case, the Illinois Appellate Court's ruling permitted the taking of Petitioner's property without assurance that the City of Wheaton followed the law. In these circumstances, the City of Wheaton's taking of Petitioner's property was invalid and in violation of the Fourteenth Amendment.

CONCLUSION

For the foregoing reason, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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